

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

of: Muldermans et al.

Serial No.: 10/518,985

Filed: December 21, 2004

Attorney Dkt No: L0008/US

Confirmation No.: 3187

Group Art Unit: 1795

Examiner: Johnson, Connie P

Title: Photopolymerizable Compositions and Flexographic Printing
Plates Derived Therefrom

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Reply Brief

(37 CFR 41.41)

Honorable Sir:

This Reply Brief is submitted in response to Examiner's Answer issued July 23, 2009 and is in conformance with the requirements of 37 CFR 41.41. It is respectfully requested that Appellants' additional arguments be considered and the rejections over the pending claims be withdrawn.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 8132.003.PCUS00.

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STATUS OF CLAIMS

Claims 11-14 and 17-30 are pending and claims 11-14 and 17-30 stand rejected.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 11-14 and 17-30 stand rejected under 35 USC §103(a) as being unpatentable over **Victor et al.** (“**Victor**”), US Patent No. 6,127,094.

ARGUMENT

Claims 11-14 and 17-30 stand rejected under 35 USC §103(a) as being unpatentable over **Victor et al.** (“**Victor**”), US Patent No. 6,127,094.

In large part Appellants arguments are that the reference Victor includes a composition (A) through (E) disclosed in col. 3, lines 43 to col. 4, line 13, of which component (A) is required in the composition of Victor. This component (A) is outside the scope of the present claims. Appellants’ claims use the transitional phrase “consisting essentially of” and because component (A) is required to be in the composition of Victor and would materially affect the basic and novel characteristics of the claimed invention, the composition of Victor is necessarily outside the scope of the present claims, and does not disclosed or suggest the present claims.

To reiterate, component (A) is

- (A) in the range of about 25 up to about 80 wt% of at least one copolymer consisting essentially of in the range of:
- (i) about 25 up to about 95 mol % of at least one elastomer forming monomer,
 - (ii) about 0.5 up to about 30 mol % of at least one α,β -ethylenically saturated carboxylic acid, and
 - (iii) about 0.1 up to about 50 mol % of at least one polyfunctional vinyl monomer;
- (further discussed in col. 4, line 36 to col. 5, line 7)

The three constituents in (A) are further defined in Col. 4 of the reference:

- (1) The “Elastomer forming monomers” as in (A)(i) according to Victor are defined in Col. 4, lines 36-44 of the reference as (emphasis added):

Elastomer forming monomers contemplated for use in the practice of the present invention include **acrylates, methacrylates, and the like**. Exemplary compounds contemplated for use herein include ethyl (meth)acrylate, methyl (meth)acrylate, hydroxyethyl (meth)acrylate, dimethylaminopropyl (meth)acrylate, diethylaminopropyl (meth)acrylate, 2-ethylhexyl (meth)acrylate, butyl (meth)acrylate, lauryl (meth)acrylate, and the like, as well as mixtures of any two or more thereof.

- (2) Furthermore, “ α,β -ethylenically saturated carboxylic acid” as in (A)(ii) according to **Victor** are defined in Col. 4, lines 45-50 as:

α,β -ethylenically unsaturated carboxylic acids contemplated for use in the practice of the present invention include methacrylic acid, acrylic acid, itaconic acid, maleic acid, β -carboxyethyl acrylate (.beta.-CEA), β -carboxyethyl methacrylate, and the like, as well as mixtures of any two or more thereof.

- (3) Additionally, “polyfunctional vinyl monomer” as in (A)(iii) according to **Victor** are defined in Col. 4, lines 51-59:

α,β -ethylenic site of unsaturation. Polyfunctional vinyl monomers contemplated for use in the practice of the present invention include ethyleneglycol di(meth)acrylate (i.e., ethyleneglycol diacrylate or ethyleneglycol dimethacrylate), divinyl benzene, 1,6-hexanediol di(meth)acrylate, 1,4-butanediol di(meth)acrylate, trimethylolpropane tri(meth)acrylate, erythritol tetra(meth)acrylate, and the like.

The Examiner’s response to this appears to be that Victor discloses liquid isoprene and liquid butadiene which are in component (E) and may serve as optional linkages in the block copolymer of Victor and are therefore “not extra components in the composition of Victor.” *Examiner’s Answer, p. 5, lines 6-10.* Examiner further argues that “auxiliary” in Appellants’ claims are 40% and “appears to be a large part of the composition and not some merely unimportant component.”

Appellants submit that the above does not appear to have any bearing on Appellants’ above argument that component (A) of Victor is required in their composition and so falls out of the scope of the present claims.

Appellants note that liquid isoprene and liquid butadiene are listed in part (d) of the present claims. However, the fact that liquid isoprene and liquid butadiene are within the scope of part (d) – auxiliaries - of the present claims does not have any bearing on the fact that Victor requires additional component (A) in its composition as described above.

Appellants further note that although part (d) in Appellants’ claims is labeled “auxiliaries,” Appellants have specifically listed the types of auxiliaries. None of these auxiliaries include in its scope component (A) of Victor.

On p. 6 of the Examiner’s answer, it is argued that the “auxiliaries” in Appellants’ claims include “more block copolymers, which easily encompass any additional block copolymer Victor allegedly teaches.” Appellants note that part (d) does not merely include just any block

copolymers, but specific types of block copolymers, namely “liquid S-B or S-I diblock copolymers.” The diblock indicates that there are only two blocks in these copolymers. Appellants further submit that this has no bearing on the fact that Victor still includes component (A), which as noted above is outside the scope of the present claims.